Scott. II-27—95,000 31 10 50.

Dev (1952) Department.

Ms SERIES.

G.O. NO. 2728

Dated 3-7-52

[Despatch Abstract.]

Suit - Civil Suit. O.S-no. 81/52
in the file of the District Munsiff - Mangalore
filed by M/s Shah Prathmlal Arnichand & Co
Arecanut Merchants Mangalore -
Defence of the State of Madras - Sanctioned

Office of the Chief Inspector of Factories, Chepauk, M a d r a s---5

From
Sri C. G. Reddi, I. A. S.,
Commissioner of Labour, and
Chief Inspector of Factories,
Chepauk, Madras--5.

To
The Secretary to Government,
Development Department,
Fort St. George,
M a d r a s -- 9.

SECOND ASSISTANT SECRETARY TO GOVERNMENT
23 JUN 1952
DEVELOPMENT DEPARTMENT

No.B.1. 23226/52 dated 19-6-1952.

Sub: Suit--Civil Suit--O.S.No.81/52 on the file of the District Munsif, Mangalore filed by Messrs. Shal Prabhulal Nemichand & Co., Arecanut Merchants, Mangalore--Defence of the State of Madras--Sanction of.

I enclose herewith a copy of the plaint in original suit No.81/52 filed by Messrs. Shal Prabhulal Nemichand & Co., Arecanut Merchant, Mangalore in the court of the District Munsiff, Mangalore, against the State of Madras. The Suit notice received through the Collector of South Kanara in this matter was forwarded to Government with my letter No.B.1.19748/51 dated 25-5-1951.

I request that the Government may be pleased to sanction the defence of the case. The written statement to be filed on behalf of the defendant will be sent to Government for approval as soon as it is received from the Government Pleader, Mangalore. The suit stands posted to 4-7-1952 for filing the written statement.

Raj. 20-6.

for Commissioner of Labour, and
Chief Inspector of Factories.

/True copy/

IN THE COURT OF THE DISTRICT MUNSIF OF MANGALORE.

3

Original Suit No.81/1952

Between

Sha Nemchand Vaghji, Proprietor, Sha Prabhulal Nemichand & Co. } Plaintiff.

and

The State of Madras. Defendant.

Plaint under Section 26 Order VII Rule 1 of the Code of Civil Procedure of 1908.

The above named plaintiff states as follows.

1. That the plaintiff is the son of Vaghji, aged about 38 years, Hindu Supari Merchant residing at Bunder Mangalore Town, which is his address for service of all notices and processes.

2. The defendant is the State of Madras, Service of notice may be made on the Government Pleader, Mangalore.

3. That by order dated 22.12.50 the Additional Inspector of Factories Circle I mangalore informed the plaintiff that the premises known as "Sha Prabhulal Namchand & Co." has been registered as a Factory under Section 2m(ii) of the Factories Act, 1948, and the plaintiff should comply with all the provisions of the Act, and the Rules made thereunder. The Order is filed herewith and may be perused as part of the plaint. Against the said order the plaintiff filed an appeal on 14--1--1951 to the Chief Inspector of Factories, Madras contending inter alia that no manufacturing process is carried on in plaintiff's premises. Without hearing the appeal as required under section 7 of the Act the Chief Inspector by order dated 12..3..1951 rejected the appeal without assigning reasons for holding that the palintiff's premies constitute a Factory. The order further directed the pdaintiff to take out licences for the year 1950 and 1951.

4. The plaintiff's premises at Bunder consist of his office and within his compound there is a fumigration room. There is also a yard for sorting and grading arecanuts. The order of the Additional Inspector as confirmed by the Chief Inspector as decalred the entire premises included of the office of the plaint as a factory.

5. That neither the Addl. Inspector nor the Chief

Inspector of Factories have held any enquiry before passing the orders in the case. The Act does not empower Factory Inspectors to declare or register any premises as Factories in disputed cases and consequently the order of the Addl. Inspector is Ultra Vires. The order of the Chief Inspector passed without hearing the appeal and without giving an opportunity to the plaintiff to present his case is illegal as being opposed to the principles of natural justice. Hence the order of the Additional Inspector is liable to be set aside.

6. That the plaintiff has been trading in arecanuts for the past several years at Bunder, Mangalore town. In the course of his business he purchases husked dry arecanuts known as 'Chali' from the warehouse at Bunder for the purpose of export to Bombay and other places in western and Northern India. On purchase the arecanuts stocked in gunnies are subjected to sulphur fumigation. The work of fumigation does not require more than 3 or 4 persons. On fumigation the arecanuts do not undergo any physical or chemical alteration or does fumigation amount to adapting for sale an article within the meaning of section 2(k)(i) of the factories act.

7. That the arecanuts are sorted in plaintiff's yard by picking the spoiled nuts known as 'Koka'. After sorting, the nuts are graded according to six by passing them through a set of rectangular sieves made of tin sheets ~~with~~ circular holes of requisite size. The sieves are rocked by workers engaged for the purpose. The plaintiff, however does not employ the workers either directly or through agency. The work of sorting and grading is entrusted to independent contractors who employ the required number of workers.

8. That the fumigation, sorting and grading of arecanuts are not carried on throughout the year but only during the arecanut marketing season and even during the season the work is of a casual nature depending upon supply demand and other factors. The workers employed by the contractors are not working exclusively in the premises of the plaintiff, they do similar work at other places as well. The plaintiff has not control over the number of workers employed, and the terms of their employment. The contract of employment exists only between the contractors and the workers.

9. That the sorting and grading of arecanuts do not alter their character at all. Nor would that be an adaptation of the articles with a view to their use, sale transport delivery or disposal. Manufacturing process implies a change in the article. The mere separation of articles one from the other does not amount to a manufacturing process. The decision of the Chief Inspector of Factories confirming that of his subordinate and also that of the defendant as conveyed in their letter dated 18..10..51 to the effect that sorting and grading of arecanuts carried on in the premises of the plaintiff constitute a manufacturing process as defined in the act is erroneous and is based on an incorrect understanding of the facts and law. The plaintiff submits that sorting or grading of arecanuts does not constitute a manufacturing process as defined in the act and as the premises of the plaintiff were sorting and grading of arecanuts is carried on are not liable to be declared and registered as a factory.

10. That the sorting or grading of arecanuts is not incidental to or connected with the work of fumigation. Even if fumigation is to be considered as a manufacturing process within the definition of the act the workers employed for

sorting and grading arecanuts are not liable to be included in the number of workers employed in any manufacturing process or in any kind of work incidental or connected with the manufacturing process.

11. That the provisions of the factories act and the rules made thereunder require the plaintiff to obtain a licence on payment of the prescribed fee every car maintain innumerable registers giving various particulars like the attendance of the workers, their names and addresses, their pay, hours of work holidays, dearness allowance etc and submit a lrge number of quarterly half yearly and annual returns. When the plaintiff entrusts the work of sorting and grading to independent contractors, the latter alone should be in a position to supply the various particulars and not the plaintiff. The Factories act and the rules indirectly compel the plaintiff to dispense with the practice of entrusting the work to independent contractors and take upon themselves the responsibility of employing the workers. Under article 19 of the constitution of India the plaintiff has the right to carry on any occupation, trade or business and the restrictions imposed by the factories act on the exercise of the right conferred by sub clause (g) of article 19(1) of the constitution are not reasonable and as such Ultra vires as being repugnant to article 19(1)(g) of the constitution.

12. That the Government of Madras while making the Madras Factory Rules 1950 did not exercise its mind and consider the question as to whether the rules framed under the Act were expedient in order to give effect to the purposes of the Act as required under Section 112 of the Act. Hence the Madras Factory Rules 1950 is Ultra Vires and unenforcible.

13. That the plaintiff i sued a notice dated 29--4--1951 to the defendant under section 80 of the C.P. Code and the same was served on the Collector of South Kanara on 1--5--1951.

14. That the ~~plaintiff-issue~~ cause of action for the suit arose on 22--12--1950, 12--3--1951, and 18--10--1951 and subsequently in Mangalore within the jurisdiction of this court.

15. That the suit is valued for purposes of Court fee and jurisdiction at Rs.1,000/- and a fided cout Fee of Rs.15/- is paid under Article 17- B of schedule II of the court Fees Act.

16. Plaintiff, therefore prays for a decree and judgement for the following reliefs:-

(i) To set aside the order of the additional Inspector of Factories, Circle, I Mangalore dated 22-12-1950 as confirmed by the Chief Inspector as per order dated 12--3--1951. } Rs.1,000/-

This relief is valued at Rs.1000/- as the claim is incapable of valuation and a fixed court fee of Rs.15/- is paid under Article 17-B of Schedule II of the Court Fees Act.

(ii) Costs of suit.

And for such other and further reliefs as the court may deem fit and proper under the circumstances of the case.

Mangalore 16--3--1952. Plaintiff.

Advocate for plaintiff.

I, Sha Nemchand Vehji, Proprietor, Sha Prabhulal Nemchand & Co do hereby declare that the above stated facts have been read over and translated to me in Hindi and are true to the best of my knowledge and belief.

List of documents filed under Order VII Rule 14 C.P.C.

1. 22-12-1950 Order of the Additional Inspector of Factories in F.No.117/50 I.R.
2. 12-3-1951 Order of the Chief Inspector of Factories, Madras in D.Dis B1-3708/51 dated 12-3-1951.
3. 29-12-1951 Office of the notice issued to defendant under section 80 C.P. Code.
4. 1--5--1951 Office Postal acknowledgement of the Collector of South Kanara.
5. 18--10--1951 Reply sent by the defendant to plaintiff in letter No. 59531/PII/51-3

Mangalore 16--3--1952. Advocate for plaintiff.

Dev. Dept (1)

17

(70536 P(1)/52)

Sub: Suits - Civil Suit ~~No.~~ O.S.No. 81/52 on the file of the District Munsiff, Mangalore filed by Mr. Shah Prabhulal Nemichand & Co., Arecanut Merchants, Mangalore - Defence of the State of Madras - sanctioned.

Ref: From the C.P.F No. B.1. 23226/52 & 19.6.52

G.O.Ms. 2788 Dev. dt 3.7.52

The Governor of Madras sanctions the defence of the State of Madras in ~~the~~ original suit No: 81/52 on the file of the Court of the District Munsiff, Mangalore.

2. The Government Pleader, South Kanara is requested to appear on behalf of the State of Madras (Defendant) in the above suit.

3. ~~The~~ A copy of the plaint received with the reference cited is forwarded to the Govt. Pleader South Kanara. He is requested to prepare a draft written statement to be filed on behalf of the defendant and to submit the same to the Govt. thro' the Chief Inspector of Factories, Madras, at ~~early~~ a very early date for approval.

4. The C.P.F is requested to render necessary assistance to the Govt. Pleader, South Kanara, in the matter.

28/6/52

To the C.P.F, Madras
The Govt. Pleader, South Kanara at Mangalore (Civil)
(Copy upto 3-7 CF)
Accountant Finance
Copy to Home Dept.
Copy to the Collector, South Kanara.
Spare

Sort I 13

Office of the Chief Inspector of Factories, Chepauk, M a d r a s.

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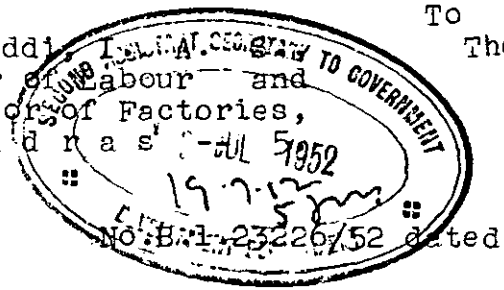
From
Sri C. G. Reddi, I.C.S.,
Commissioner of Labour and
Chief Inspector of Factories,
Chepauk, M a d r a s.

To
The Secretary to Government,
Development Department,
Fort St. George
M a d r a s--9.



No.B.1-23226/52 dated 18-7-1952.

Sir,

81670

Sub: Suit--Civil Suit--O.S.No.81/52 on the file of the District Munsiff, Mangalore--Filed by Nemchand Vaghji, Proprietor of Sha Prabhulal Nemchand & Co. --Draft written statement--Approval of--

Bill of (S) Ref: G.O.No.Ms.2788 Development Department dated 3-7-1952.

--o--

Adv 3-Chalan

I enclose herewith the draft written statement received from the Government Pleader, Mangalore to be filed on behalf of the defendant (State of Madras) in O.S.No.81/52 on the file of the District Munsiff, Mangalore together with a copy of the plaint and a file No,D.Dis.3708/51.

(R4)

I request that the Government may be pleased to approve the draft written statement at an early date and send it to the Government Pleader, Mangalore direct with the enclosures so as to enable him to file the same into the Court in time. The case stands posted to 2-8-1952 for filing the written statement.

18/7/52

SGS/18.7.

For Commissioner of Labour &
Chief Inspector of Factories.

18/7/52

15

IN THE COURT OF THE DISTRICT MUNSIFF OF MANGALORE.

O.S.NO. 81 OF 1952.

Between:-

Sha Nemec..... Sole Proprietor,
Sha Prabhulal Nemechand & Co. | - Plaintiff.

and

The State of Madras represented by the Collector of South Kanara MANGALORE. | - Defendant.

WRITTEN STATEMENT OF THE DEFENDANT UNDER ORDER VIII, RULE 1, OF CIVIL PROCEDURE CODE OF 1908.

The Defendant begs to state as follows:-

1. The Plaintiff's suit is unsustainable at Law.

2. The Defendant admits that the additional Inspector of Factories, Circle 1, Mangalore, has after holding an inspection and satisfying himself that the Plaintiff was carrying on certain items of work in his premises by emplying labourers, which so as come within the purview of the Factories Act and the Rules framed thereunder, registered the premises of the Plaintiff as a factory and has issued the order mentioned in the plaint requiring the Plaintiff to carry out all the provisions of the Factories Act, 1948 and rules made thereunder. It is also true that the Plaintiff preferred an Appeal against the said Order to the Chief Inspector of Factories. But the Appeal was dismissed after proper and necessary enquiry.

3. The Plaint averments in para 5 of the Plaint that the Additional Inspector or the Chief Inspector did not hold an enquiry or that the Order of the Additional Inspector is ultra vires in as much as the Act does not empower Factory Inspectors to pass such orders are incorrect and useless. The Order was passed by the said Inspector in strict compliance with the provisions of the said Act and after due enquiry.

16.

4. The Defendant submits that the definition of "Manufacturing Process" given in Sec. 2(K) of the Act- clearly includes the process conducted by the Plaintiff regarding the arecanuts in his premises. The Plaint averments that no machinery is used for the said works and/or that the character of arecanuts is not altered by the said processes, are not correct nor are they the tests indications to decide whether "Manufacturing process" is carried on in the Plaintiff's premises or not.

para 6, p 9 infra

para 7, p 9 infra

5. The Defendant does not admit that the works of "fumigation, sorting and grading" of arecanuts are not carried on throughout the year or that the plaintiff does not employ the workers, either directly or through agency, but entrusts the same to independant contractors and that as such he has no control over the number of workers employed, and the terms of their employment. The Plaintiff is put to strict proof of the same. The Defendant submits that even if the above allegations are correct, the plaintiff cannot escape from the liability imposed upon him by the said Act and the Rules framed made thereunder.

para 8, p 9 infra

para 11, p 9 infra

6. The Defendant emphatically denies that the said Act and the Rules contravene in any way the provisions of the Constitution. The restrictions imposed by the Factories Act and the Rules made thereunder are quite reasonable and are enforced with the sole idea of improving the conditions of labouring class and compelling the owners of factories to maintain certain standards of health and cleanliness. Hence the Factory Act and the Madras Factory Rules, 1950 are quite valid and are strictly enforcebale.

para 11 & 12, p 9-10 infra

7. It is submitted that this Court has no jurisdiction to entertain this suit.

8. The suit notice is defective and invalid.

17

9. The frame of the suit is not proper and the cause of action is misconceived. The Plaintiff is not entitled to the relief prayed for.

10. The valuation of the suit is not correct and the Court-fee paid is insufficient.

11. The suit is barred by limitation.

12. All other plaint allegations not specifically traversed herein may be deemed as denied.

13. Hence this suit is liable to be dismissed with costs.

MANGALORE.
Date .7. 1952.

Defendant.

Government Pleader of S.K.

I, the Defendant named above do hereby declare that the facts stated above are true to the best of my knowledge and information.

MANGALORE.
Date .7.1952.

Defendant.

17

Copy of letter dated 6.6.52 from the Government Pleader, S.Kanara, To the Collector of S.Kanara.

Civil Suit filed by Sri Nemchand Vaghji Proprietor - against the State of Madras - copy of suit notice forwarded - instructions requested - date of posting of the case intimated.

Enclosed herewith please find a copy of the suit notice in O.S.No.81/52 on the file of the District Munsiff of Mangalore which stands posted to 4.7.52 for filing written statement. I have already filed an appearance for Government. The case stands posted to 4.7.52 for filing written statement. I request the connected papers of enquiry with the copy of the plaint may be kindly sent over to me sufficiently early, so as to enable me to prepare the draft written statement and send them early for your approval. Please treat the matter as urgent.

/true copy/

IN THE COURT OF THE DISTRICT MUNSIF OF MANGALORE.

Original Suit No.8/1952

Between

Sha Nemchand Vaghji, Proprietor,)
Sha Prabhulal Nemichand & Co.) Plaintiff.

and

The State of Madras. Defendant.

Plaint under Section 26 Order VII Rule 1 of the Code of Civil Procedure of 1908.

The abovenamed plaintiff states as follows.

1. That the plaintiff is the son of Vaghji, aged about 38 years, Hindu, Supari Merchangt residing at Bunder Mangalore Town, which is his address for service of all notices and processes.

2. The defendant is the State of Madras. Service of notice may be made on the Government Pleader, Mangalore.

3. That by order dated 22.12.50 the Additional Inspector of Factories Circle I Mangalore informed the plaintiff that the premises known as "Sha Prabhulal Namchand & Co.& has been registered as a Factory under Section 2m(ii) of the Factories Act, 1948, and the plaintiff should comply with all the provisions of the Act, and the Rules made thereunder. The order is filed herewith and may be perused as part of the plaint. Against the said order the plaintiff filed an appeal on 14.1.1951 to the Chief Inspector of Factories, Madras contending inter alia that no manufacturing process is carried on in plantiff's premises. Without hearing the appeal as required under section 7 of the Act the Chief Inspection by order dated 12.3.1951 rejected the appeal without assigning reasons for holding that the plaintiff's premises constitute a Factory. The order further directed the plaintiff to take out licences for the year 1950 and 1951.

4. The plaintiff's premises at Bunder consist of his office and within his compound there is a fumigation room. There is also a yard for sorting and grading arecanuts. The order of the Additional Inspection as confirmed by the Chief Inspector has declared the entire premises inclused of the office of the plaint as a factory.

5, That neither the Addl. Inspection nor the Chief Inspection of Factories have held any enquiry before passing the orders in the case. The Act does not empower Factory Inspectors to declare or register any premises the order of the Addl. Inspection is Ultria Vires. The order of the Chief Inspection passed without hearing the appeal an without giving an oopurtunity to the plaintiff to present his case is illegal as being opposed to the principles of natural justice. Hence the order of the Additional Inspector is liable to be set aside

That the plaintiff has been trading in arecanuts for the past several years at Funder, Mangalore town. In the course of his business he purchases husked dry arecanuts known as 'Chali' from the warehouse at Bunder for the purpose of export to Bombay and other places in western and Northern India. On purchase the arecanuts stocked in gunnies are subjected to sulphur fumigation. The work of fumigation does not require more than 3 or 4 persons. On fumigation the arecanuts do not undergo any physical or chemical alteration nor does fumigation amount to adapting for sale an article within the meaning of section 2(k)(i) of the factories Act.

7. That the arecanuts are sorted in plaintiff's yard by picking the spoiled nuts known as 'Koka'. After sorting, the nuts are graded according to size by passing them through a set of rectangular sieves made of tin sheets with circular holes of requisite size. The sieves are rocked by workers engaged for the purpose. The plaintiff, however does not employ the workers either directly or through agency. The work of sorting and grading is entrusted to independant contractors who employ the required number of workers.

8. That the fumigation, sorting add grading of arecanuts are not carried on throughout the year but only during the arecanut marketing season and even during the season the work is of a casual nature depending upon supply demand and other factors. The workers employed by the contractors are not working exclusively in the premises of the plaintiff, they do similar work at other places as well. The plaintiff has no control over the number of workers employed, and the terms of their employment. The contract of employment exists only between the contractors and the workers.

9. That the sorting and grading of arecanuts do not alter their character at all. Nor would that be an adaptation of the articles with a view to their use, sale transport delivery or disposal. Manufacturing process implies a change in the article. Mere separation of articles one from the other does not amount to a manufacturing process. The decision of the Chief Inspector of Factories confirming that of his subordinate and also that of the respondant as conveyed in their letter dated 18.10.81 to the effect that sorting and grading of arecanuts carried on in the premises of the plaintiff constitute a manufacturing process as defined in the Act is erroneous and is based on an incorrect understanding of the facts and law. The plaintiff submits that sorting or grading of arecanuts does not constitute a manufacturing process as defined in the Act and as such the premises of the plaintiff where sorting and grading of arecanuts is carried on are not liable to be declared and registered as a factory.

10. That the sorting or grading of arecanuts is not incidental to or connected with the work of fumigation. Even if fumigation is to be considered as a manufacturing process within the definition of the Act, the workers employed for sorting and grading arecanuts are not liable to be included in the number of workers employed in any manufacturing process or in any kind of work incidental or connected with the manufacturing process-

11. That the provisions of the Factories Act and the rules made thereunder require the plaintiff to obtain a licence on payment of the prescribed fee every year maintain innumerable registers giving various particulars like the attendance of the workers, their names and addresses, their pay, hours of work holidays, dearness allowance etc and submit a large number of quarterly, half yearly and annual returns. When the plaintiff entrusts the work of sorting and grading to independent contractors, the latter alone should be in a position to supply the various particulars and not the plaintiff. The Factories Act and the rules indirectly compel the plaintiff to dispense with the practice of entrusting the work to independent contractors and take upon themselves the responsibility of employing the workers. Under article 19 of the constitution of India the plaint has the right to carry on any occupation, trade or business and the restrictions imposed by the Factories Act on the exercise of the right conferred by sub clause (g) of article 19(1) of the constitution are not reasonable and as such Ultra vires as being repugnant to article 19(1)(g) of the constitution.

12. That the Government of Madras while making the Madras Factory

Rules 1950, did not exercise its mind and consider the questions as to whether the rules framed under the Act were expedient in order to give effect to the purposes of the Act as required under Section112 of the Act. Hence the Madras Factory Rules 1950 is Ultra Vires and unenforcible.

13. That the plaintiff issued a notice dated 29-4-1951 to the defendant under section 80 of the C.P.Code and the same was served on the Collector of South Kanara on 1-5-1951.

14. That the cause of action for the suit arose on 22-12-1950, 12-3-1951, and 18-10-1951 and subsequently in Mangalore within the jurisdiction of this court.

15. That the suit is valued for purposes of Court fee and jurisdiction at Rs 1,000/- and a fixed count Fee of Rs 15/- is paid under Article 17- B of schedule II of the court Fees Act.

16. Plaintiff, therefore prays for a decree and judgement for the following reliefs:-

(i) To set aside the order of the additional Inspector of Facotories, Circle, I Mangalore dated 22-12-1950 as confirmed by the Chief Inspector as per order dated 12-3-1951. Rs 1,000/-

This relief is valued at Rs 1000/- as the claim is incapable of valuation and a fixed court fee of Rs 15/- is paid under Article 17-B of Schedule II of the Court Fees Act.

(ii) Costs of suit.

And for such othr and further reliefs as the court may deem fit and proper under the circumstances of the case.

Mangalore 16-3-1952.

Plaintiff.

Advocate for plaintiff.

I, Sha Nemchand Vehji, Proprietor, Sha Prabhulal Nemchand & Co do hereby declare that the above stated facts have been read over and translated to me in Hindi and are true to the best of my-kindlw knowledge and belief.

List of documents filed under Order VII Rule 14 C.P.C.

1. 22-12-1950 Order of the Additional Inspector of Factories in F.No 117/50 I.R.
2. 12-3-1951 Order of the Chief Inspector of Factories, Madras in D.Dis Bl- 3708/51 dated 12-3-51.
3. 29-4-1951.Office of the notice issued to defendant under section 80 C.P.Code.
4. 1-5-1951 Postal acknowledgement of the Collector of South Kanara.
5. 18-10-1951 Reply sent by the defendant to plaintiff in letter No 59531/ PII/51-3.

Mangalore 16-3-1952.

Advocate for plaintiff.

Special

Dev-(P II) Dept.

Memo no 81620 P II/52-2 dated: 26/7

Plaint in mine

Sub Suits - Civil Suit - O.S. 81/52 on the file of the District Munsiff, Mangalore filed by M/s Shet Prabhulal Premchand & Co - Arecanut Merchants. Defence of the State of Madras - Draft Written Statement — Approved.

Ref. G.O. Ms. no 2788 Dev-2 dated 3/7/52

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~~A copy of the~~ The Written Statement to be filed on behalf of the State Govt (defendants) in the original Suit no. 81 of 1952 on the file of the Dist. Munsiff of Mangalore, received from the C.D.F. is approved as amended in pencil and forwarded to the Govt. Pleader, South Kanara at Mangalore. He is requested to get the written statement signed

Upto now 35 days

To the Govt Pleader. (with encl)

Copy to the C.D.F. (with ref to his letter no B1. 23726/52-25)

~~24~~ 26

by the Collector of South Kanara and also
request him with the facts of the case ~~already done so~~.

The receipt of this memo may be
acknowledged.

25/12

25/12

26/7

Copy to Home Dept.
& ... Collector
South Kanara.

(R.O. 15/V)

26/7

Memorandum: 1870 (P II) 52 - 2 - 130 (Pt) 19.8.52

Sub: Suit. Civil Suit. O.S. 81/52 on the file of the Hon. Munsiff, Mangalore. Filed by M/s Shiva Pattabhirama Nayak & Co. Accountants & merchants, Udupi. A written statement - approved.

Ref: From the C.I.F. No. B.1.23226/52 dt. 18.7.52

Memorandum No. 1670 (P II) 52 - 2 dt. 26.7.52

The file bearing D. dis. 3708/52 dt. 12.3.51, received from the C.I.F. with the letter quoted is returned to him. He is requested to acknowledge its receipt.

for Secretary to Government

Dy. Secy. to Govt.

Memo. 8670/Pl/52-53 Govt.

Plaint
2
1952

Sub:- Suit - Civil Suit No. 85/52 on the file of the District Munsiff, Mangalore filed by M/s. Shah Babulal Nemichand & Co. Accountant merchants - Draft written Statement

Ref:- Govt. Memo No. 8670/Pl/52/2 dt 26.7.52

14 13-14 typ.

S. Kamath

The Govt. Pleader, Mangalore

is requested to acknowledge receipt of the Govt. memo cited, as requested therein.

1882
1883/52

Filed

Pleader

To/ The Govt.
S. Kamath
Mangalore

RO 30/8

I 29-17

Office of the Chief Inspector Inspector of Factories, Chepauk, Madras.

From
Sri C.G.Reddi, I.A.S.,
Commissioner of Labour and
Chief Inspector of Factories,
Chepauk, M a d r a s.

To
The Secretary to Government,
Development Department,
Fort St.George,
M a d r a s.

o-o-o-

I

Ref. No....732/52

From:

Sri B. Gangadhar Das, B.A., B.L.,

Advocate & Government Pleader

Office of the Government Pleader,
South Kanara.

Mangalore 30.8.52195

SOUTH KANARA COLLECTOR'S OFFICE 2 - 1952 Fn.

South Kanara ... Collectorate

SECOND ASSISTANT TO COLLECTOR 3 Sep 1952

Asst.Secretary to Government
Government of Madras,
Development Department
MADRAS

101778

Sir,

Sub: Suits:Civil suit No. O.S.No.81/52 on the file of the District Munsiff-of-Mangalore filed by Messrs.Sha Prabhulal-Nemchand & Company -Arecanut Merchants- Memo acknowledgement sent. Your ref: Memorandum No.81670. P. II/52 4 dated 12.8.1952.

The memo sent with your reference No.81670 P.II /52 -2 dated 26.7.52 has been received in this Office.

Yours faithfully,

GOVERNMENT PLEADER OF S.K.

Missent.
submitted to the Asst. Secretary to Govt.
Development Department, Madras.

for collector,
South Kanara

2.9.52

Toth (Hh 17-19 alone)

The Govt Pleader and the C.I.F have acknowledged the receipt of the orders and the enclosures sent to them respectively on Hh 17-19 alone. No further action is called for. May be lodged and added to Govt. 278 Dis dt 3.7.52 (5)

10/7/52 11/7/52

Labour Dept

MDS

(Cw 10536 P(II)52)

Subj: Sundr. civil Suit O.S. no. 81/52 on the file of the Dt. Munsiff, Mangalore filed by Ms. Shah Prabhulal Nemichand & co., Arecanut Merchants Mangalore - Defence of the State of Madras - Sanction. proposal.

Ref: From the C.F. no. B.I. 23226/52 dt 19.6.52

I.O.As

The letter from the C.F. and its enclosures in the C.F. may be perused.

The premises of Ms. Shah Prabhulal Nemichand & co., where arecanuts are graded, garbled and packed etc was registered as a factory under the Factories Act, 1948. The occupier of the factory sent an appeal petition dt 14.1. against the registration of his factory, to the C.F. The C.F. reported that the case was enquired into and the appellant was informed by the C.I.P. that his premises would be covered by the Factories Act, 1948 as garbling, sorting etc of arecanuts were carried on in his factory where are manufacturing processes within the meaning of the Factories Act, 1948 and more than 9 persons were employed in that factory. [The question "whether the arecanut factories would be covered by the Factories Act or not was examined by Govt in consultation with the C.F. and Legal dept. and it was decided that the premises will be covered by the Factories Act. - vide [Letter 90088 P(II)50 dt 18.12.50.]

Subsequently in May 1951, the occupier issued a notice to the Govt. threatening to sue them in a court of law if the order placing his premises as factories under Factories Act was not revoked. The matter was again examined and the party was informed that his premises would constitute a factory under the Factories Act, 1948 and that the provisions of the Act should be complied with: please see letter no. 49531 P(II)51-3 dt 18.5.51.

dft 1-2 of (K)

dft 1 of (K)

dft 3-4 of (K)

dft 7-8 of (K)

Before sending the reply, the Govt. had also the benefit of the opinion of the Govt. of India, Ministry of Law, in regard to the applicability of the Factories Act to premises where cardamom and arecanuts are graded. Govt. of India stated inter alia that the processes of grading arecanuts and cardamom amounts to treating as packing and will therefore constitute a manufacturing process as defined in the Factories Act, 1948.

Ms. Shah Premchand Prabhulal - Premchand & Co., Mangalore have now filed a suit in the court of the District Munsiff, Mangalore to set aside the order of the Additional Inspector of Factories, Mangalore registering their premises as a factory under the Factories Act, 1948. The C.G.P has forwarded a copy of the plaint and has requested the Govt to sanction the defence of the case. The defence of the suit on behalf of the Govt. may be sanctioned and the Govt. Pleader asked to conduct the defence. He may also be asked to submit for approval of the Govt. the draft written statement, that the C.G.P, to be filed on behalf of the State of Madras. Subject to orders a draft order is submitted for approval.

In this connection, it may be mentioned that a similar suit has been filed by ~~a Bombay merchant~~ arecanut a Bombay merchant in the court of the Subordinate Judge of South Kanara and the Govt. have sanctioned the defence. Vide G.O. Ms. 1051 dtd 13.3.52.

Home / Legal / Fin. may see and may be requested to treat the case as special.

28.6.52 Under Sec.

28/6/52

28.6.52

Home

Fin

Legal

(P.T.O)

ASSISTANT SECRETARY TO GOVERNMENT 30 JUN 1952 HOME DEPARTMENT

Recd at 2.30 P.M.

Demi 705 dtd 29.6.52

Home Dept

The note of Dev dept at pp 1-2 and the draft order below may be perused and the file passes on to Fin dept

H/30.6.1952

JS/30/6/52

Fin

115979
30/6/52
30/6/52

Homeno 115979 C/b III/52-1
30/6/52

ADDITIONAL DEPUTY SECRETARY TO GOVERNMENT
30 JUN 1952
48287
FINANCE DEPARTMENT

from (Accts)

Note from p. 1 above and the draft order below may be perused

Pa
30-6-52

(Laxpdr on C.L)

1.7.52

Legal (Courts)

Legal (Courts)

The draft is accepted

KLeela
2/7/52

Dcot Dept

PII

No. 48287-Accts/52-4

1-7-52

ASSISTANT SECRETARY
LEGAL DEPARTMENT
1 JUL 1952
10356
3.50 pm

ADDITIONAL DEPUTY SECRETARY TO GOVERNMENT
30 JUN 1952
DEVELOPMENT DEPARTMENT

Do As

The draft order below

Legal Dept. No. 1861/52-1

2.7.52

seen by Hon and fin and accepted by us Legal Depts. may now issue

3/7/52

3/7/52

3/52

3/52

(Issued as Govt No 27882 Dev dy 3.7.52)

DEVELOPMENT DEPARTMENT(P II)

(Cm 84670/52)

Sub: SUITS - Civil Suit - O.S.81/52 on the file of the District Munsiff, Mangalore filed by M/s-Shal Prabhulal Nemichand & Co. - Arecanut Merchants - Defence of the State of Madras - Sanctioned - Draft written statement - filing of

plq

Ref: From the C.I.F.No.B.1.23226/52 dated 18-7-1952.

plq of (5)
Go. 2788 Dev
3-7-52

The premises of Messrs.Shal Prabhulal Nemichand & Co., where arecanuts are graded, garbled and packed etc., was registered as a factory under the Factories Act, 1948. The occupier of the factory sent an appeal petition dated 14-1-1951 against the registration of his factory, to the C.I.F. The case was enquired into and the appellant was informed by the C.I.F. that his premises would be covered by the Factories Act, 1948 as garbling, sorting etc. of arecanuts were carried on in his factory which are manufacturing process within the meaning of the Factories Act, 1948 and more than 9 persons were employed in that factory. In May 1951, the occupier issued a notice to the Govt. threatening to Sue them in a Court of Law if the order placing his premises as factories under Factories Act was not revoked. The matter was again examined and the party was informed that his premises would constitute a factory under the Factories Act, 1948 and that the provisions of the Act should be complied with. The occupier has filed a suit in the Court of the Dt.Munsiff, Mangalore to set aside the order of the Additional Inspector of Factories, Mangalore registering their premises as factories under the Act. The C.I.F. while forwarding a copy of plaint requested the Govt. to sanction the defence of the State. The defence of the State of Madras was accordingly sanctioned in G.O.Ms.No.2788 Dev. dated 3-7-52. The Govt. Pleader was requested to appear on behalf of the State of Madras (Defendant) in the above suit and to prepare a draft written statement to be filed on behalf of the defendant and to send it to Govt.thro' the C.I.F., Madras.

plq of (5)

plq of (5)

Para 3 on plq of (5)

The C.I.F., has now forwarded the draft written statement to be filed in the Court on behalf of the defendant, prepared by the Govt. Pleader. The facts in the statement are matters for verification by the C.I.F. As the C.I.F. has forwarded the statement for the approval of Govt. it is presumed that he would have satisfied himself of the correctness of facts. No remarks seem called for. The statement may be approved and forwarded to the Govt. Pleader, South Kanara. In the written Statement the defendant is shown as State of Madras represented by the Collector of South Kanara. It is presumed the statement has to be signed by the Collector and the Govt. Pleader would take necessary action to get it signed the Collector.

Legal (Court) may see. ~~before issue~~.

22.7.52 22/7/52 S 22/7 Legal

22/7

Legal

Legal (Courts) Dept. Memo. 8167011/52-1

24.7.52

It is presumed that the Collector, South Kanara, is acquainted with the facts of the case. If so, he can not only sign but also verify the written statement under Order VI Rules 14 and 15-A Order VI of the Code of Civil Procedure. The Collectors have been authorised to sign and is acquainted with

Ch
DS.

ASSISTANT SECRETARY 1184 22 JUL 1952 Rs 50 P.M. LEGAL DEPARTMENT

2-8-52

mr

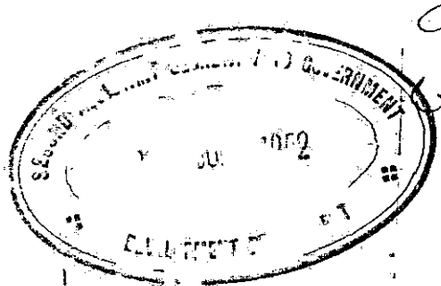
the facts of the case, to verify all pleadings in suits by or against Govt. Also Order 27 Rule 1 CPC and its connection.

Some alteration have been indicated in pencil on the draft written statement.

KCMK
24/7/52

Dept Dept

P II Section



Legis 11689-1
24.7.52

84281

Please see the notes of legal (The Collector may not be acquainted with the facts of the case) on pp 3-4 above. The Govt. Pleader will no doubt acquaint the Collector with the facts of the case, if he has not already done so, before getting the written statement signed by the Collector. A draft memo forwarding the written statement (as amended by Legal) of the G P, South Kanara is submitted for approval.

P3
25/7/52

After issue the papers may be added to those at (5)

25/7/52

25/7/52 S

25/7